

REMARKS

By this Reply, Applicant has canceled claims 318-357 without prejudice or disclaimer and added new claims 358-385. Claims 358-385 are currently pending. No new matter is added by this Reply.

Interview

Applicant thanks the Examiner for the interview held with Examiner's representative on May 25, 2010. During the interview, Applicant's representative presented potential claim amendments to the Examiner to clarify the claims and overcome the Section 112 rejection. The Examiner suggested that Applicant modify the claim amendments such that the processing is specified as the dispensing of the reagents.

The Examiner and Applicant's representative also discussed the prior art cited in the Office Action. The Examiner agreed that the Section 103 rejections would be withdrawn if, upon further review, the Examiner was able to verify that the prior art processing must stop upon insertion of a new slide/reagent.

The remarks below are consistent with the discussion during the interview.

Section 112 Rejections

In the Office Action the Examiner rejected claims 318-357 under 35 U.S.C. § 112, second paragraph, as being indefinite. Claims 318-357 have been cancelled and therefore the rejection is moot. Applicant also notes that new claims 358-385 comply with 35 U.S.C. § 112, second paragraph.

Section 103 Rejection

The Office Action also rejected claim 318-357 under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 6,998,270 to Tseung ("*Tseung*"). Applicant notes that this rejection is moot due to the cancellation of claims 318-357. To the extent that the rejection is relevant to the new claims, Applicant submits that the *Tseung* does not disclose or suggest, and the Office Action has not considered, each and every element of the claims.

Tseung discloses a robotic delivery system (22); three slide racks (20) in a slide drawer (70); a reagent rack (67) in a reagent drawer (68); and a lid (16) that contributes to a controlled environment within processing space (18). (See Fig. 3.)

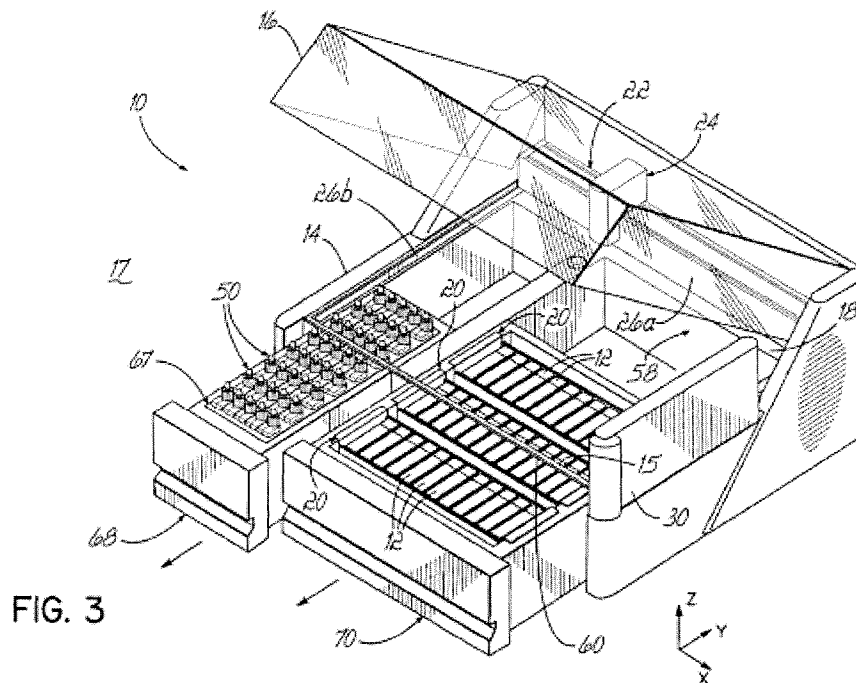


FIG. 3

While either the slide drawer (70) or the reagent drawer (68) are pulled out in order to insert or remove slides or reagents, the processing of robotic delivery system (22) cannot

continue processing because the other reagents and other slides would not be in the proper positions for the robot to continue accessing them.

Tseung column 6, lines 4-7 discloses that the drawers 68 and 70 facilitate the exchange of slides while limiting the impact of the exchange on the controlled environment within processing space 18, which Examiner asserts means that the processing is not interrupted. (See Office Action at 3.) However, the same paragraph clarifies that “stat” tissue specimens may be added while limiting impact on the controlled environment. (Col. 6, lines 7-10.) Specifically the “lid 16 is maintained in a closed condition, including instances in which the drawers 68, 70 are withdrawn.” (Col. 6, lines 11-14.)

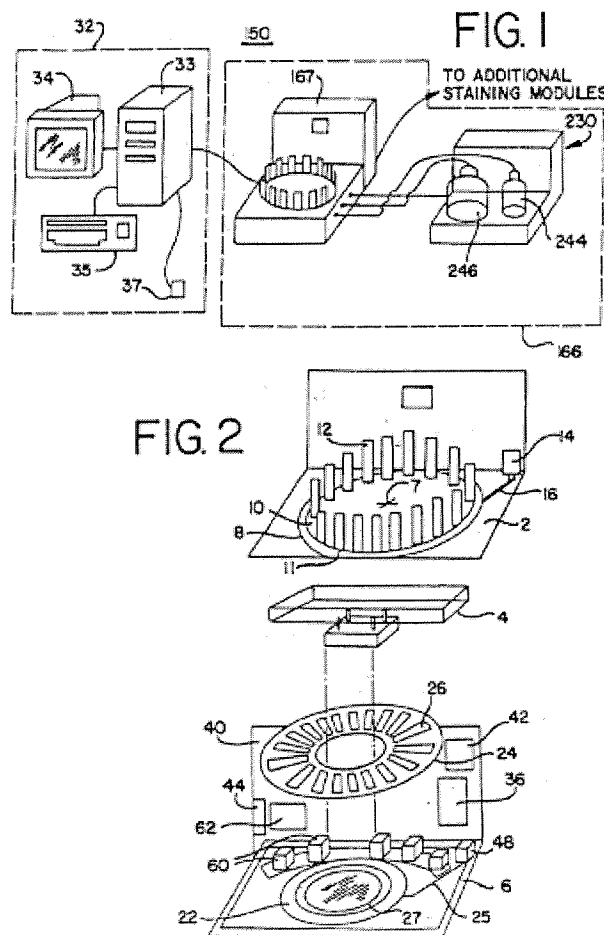
Maintaining lid in a closed condition may limit the impact of the exchange of slides on the controlled environment, i.e. keeping the lid closed may help limit changes in temp, humidity, etc., but *Tseung* does not disclose or suggest “inserting at least one reagent or a second sample into the stainer without interrupting the dispensing of reagents onto the first sample with the robotic head,” as recited in independent claim 358. Independent claim 372 includes a similar recitation. When the drawers 68,70 of *Tseung* are withdrawn, the reagents and slides are not in the correct position to be accessed continuously by the robot.

Therefore the *Tseung* apparatus is necessarily interrupted to insert or remove slides. Addition of “stat” slides further demonstrates that the *Tseung* system interrupts processing of ongoing slides to all the “stat” slides to begin processing.

Accordingly, *Tseung* does not disclose or suggest, and the Office Action does not contemplate, each and every feature of independent claims 358 and 372. For at least these reasons the claims are allowable. Dependent claims 359-371 and 373-385 are allowable at least due to their dependence from one of claims 358 or 372.

The Office Action also rejected claims 318-357 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 2002/0110494 to Lemme et al. ("*Lemme*"). Applicant notes that this rejection is moot due to the cancellation of claims 318-357. To the extent that the rejection is relevant to the new claims, Applicant submits that the *Lemme* does not disclose or suggest, and the Office Action has not considered, each and every element of the claims.

The *Lemme* apparatus includes a host device (32); one an automated biological reaction system (150) with a removable reagent tray (10); and a non-removable slide carousel (24). (See Figs. 1 and 2.)



The apparatus of *Lemme* has a single reagent carousel (10) that rotates all reagents to a determined dispense position. (See paragraph 101.) *Lemme* also discloses a single slide carousel (24) that robotically rotates the slides to various processing stations. (See paragraph 103.)

Lemme, however, does not disclose or suggest “inserting at least one reagent or a second sample into the stainer without interrupting the dispensing of reagents onto the first sample with the robotic head,” as recited in independent claim 358. Independent claim 372 includes a similar recitation. Adding or removing a slide or reagent to the system of *Lemme* interrupts the processing of other slides because there is only one reagent carousel and one slide carousel which cannot continue rotating and processing while a new slide or new reagent is being added. Therefore, operations of the apparatus of *Lemme*, such as staining, must be halted in order to ensure that the carousel does not rotate while a sample or reagent is added to the stainer.

Accordingly, *Lemme* does not disclose or suggest, and the Office Action does not contemplate, each and every feature of independent claims 358 and 372. For at least these reasons the claims are allowable. Dependent claims 359-371 and 373-385 are allowable at least due to their dependence from one of claims 358 or 372.

CONCLUSION

In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

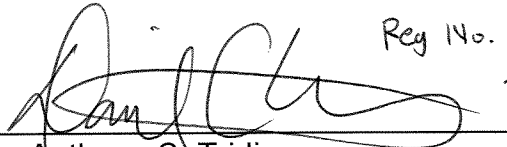
Please grant any extensions of time required to enter this response and charge
any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

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By:


Anthony C. Tridico
Reg. No. 45,958
(202) 408-4000

Reg No. 59,639
for